

How to Obtain Access to Assistive Technology In the Post High School Environment

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What is AT?

- Federal law defines AT as any item or piece of equipment used to maintain or improve the functional capabilities of a person with a disability
- Includes services related to the AT device
- A.K.A. durable medical equipment, prosthetics, rehabilitation engineering, auxiliary aids and services etc.

Universities and Colleges

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in programs or activities receiving federal financial assistance.
 - The U.S. Department of Education gives grants of financial assistance to schools and colleges and to certain other entities, including vocational rehabilitation programs.
 - The U.S. Department of Education's Section 504 regulation is enforced by OCR and is in the federal code of regulations at [34 C.F.R. 104](#).

University/College environment

- Colleges must provide auxiliary aids to enable students with impaired sensory, manual or speaking skills to participate in the program.
- Auxiliary aids can include taped texts, interpreters, readers in libraries, adapted classroom equipment and other similar services and actions. Personal services (including readers for personal study) or individually prescribed devices are not included. 34 C.F.R. § 104.44(d).

Academic Adjustments in University/College environment

- Academic adjustments in higher education...such as modifying the length of time to complete a degree, substituting courses, and adapting the manner in which courses are conducted except:
 - If the University can show that the academic requirement is essential to the student's program of instruction or to a directly related licensing requirement. 34 C.F.R. § 104.44(a).
 - All course examinations or other procedures for evaluating student performance must be modified so that they measure the student's achievement rather than the effects of the disability. 34 C.F.R. § 104.44(c).
 - Colleges cannot impose rules, such as prohibiting tape recorders or service dogs, which limit the participation of people with disabilities in the program. 34 C.F.R. § 104.44(b).

Emerging Technology at Colleges and Universities

On June 29, 2010, the U.S. Department of Justice and the [U.S. Department of Education](#) sent a letter to colleges and universities about requiring the use of an emerging technology in a classroom environment when that technology is inaccessible to an entire population of individuals with disabilities- individuals with visual disabilities- may constitute discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

Discrimination

- Denial of access to educational programs and facilities,
- Denial of a free appropriate public education for elementary and secondary students, and academic adjustments in higher education.
- Section 504 and Title II also prohibit employment discrimination; complainants may choose whether to pursue such complaints with OCR or with the [Equal Employment Opportunity Commission](#). (If employed by a Public University or College)
- Section 504 and Title II both prohibit retaliation for filing an OCR complaint or for advocating for a right protected by the two laws, and harassment of students or others because of a disability

Title II of the Americans with Disabilities Act

- Title II of the Americans with Disabilities Act of 1990 prohibits discrimination based on disability in public entities. OCR is the agency designated by the U.S. Department of Justice to enforce the regulation under Title II with respect to public educational entities and public libraries.
- The Title II regulation is in the federal code of regulations at [28.CFR 35](#).

Title III

Implementation

A Public Accommodation Under Title III is...

a private entity that owns, leases, or operates a place of public accommodation, including private commercial facilities.

See 28 C.F.R. § 36.102

Examples of Public Accommodations

- commercial lodging
- commercial food establishment (restaurant or bar)
- airports and terminals
- place of public gathering such as convention center, movie theater or sports arena
- retail store. . . .

Example: Modification of Policies re Service Animals

- A place of public accommodation shall modify policies and practices to permit use of a service animal, but does not have to care for or supervise the animal.
- See 28 C.F.R. 36.302 (c).

Examples of Public Accommodations Includes Private Programs and Services

Private entities that offer examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional or trade purposes.

Exempted From Coverage Under Title III

- **Private clubs**, unless the facilities are made available to members of the public (PGA Tour v. Martin, 532 U.S. 661 (2001))
- **Private homes** (Fair Housing Act covers rental and sale, including B&Bs)
- **Commercial aircraft** (Air Carrier Access Act)
- **Telecommunications** (21st Century Communications and Video Accessibility Act of 2010; Telecommunications Act of 1996; *Title IV of the ADA applies to common carriers that provide interstate wire or radio communications*)
- **Religious entities**
See 42 U.S.C. § 12187

Actions Required Under Title III

A public accommodation shall make reasonable modifications necessary to provide access to goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities.

See 28 C.F.R. § 36.302.

Discriminatory Conduct

Refusal to provide necessary auxiliary aids and services.

See 28 C.F.R. § 36.303

Examples of Auxiliary Aids and Services Include:

- Qualified interpreters, note-takers, computer-aided transcription services
- Written materials
- Telecommunications devices for deaf persons: telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids
- Open and/or closed captioning, video text displays, VRI (Video Remote Interpreting)
- Audio presentation of written text

Effective Accommodations: Removing Physical Barriers

- Architectural accommodations include but not limited to: installing ramps, making curb cuts, repositioning telephones, adding raised markings on elevator control buttons, widening doors, installing offset hinges to widen doorways, eliminating turnstiles, providing alternative accessible path, installing grab bars.

See 28 C.F.R. § 36.304.

Ineffective Accommodations For People Who Are Deaf and Use ASL

- Using unqualified signers
- Using signers who do not respect confidentiality or refuse to perform the neutral role of interpreter
- Refusing to provide interpreters when necessary for effective communication
- Cannot discipline hearing-impaired employees for refusing to attend meetings without interpreters

Suggestions For Effective Accommodations

- Develop criteria for evaluating effective communication.
- Incorporate general information about the differences and needs of people with disabilities as part of training for people who handle ADA accommodation requests.
- Investigate equipment that can enhance communication in the workplace, such as screen-reader technology, two-way pagers, TTY's, and visual alarms.
- Consider obtaining a TTY for hiring and recruitment and hosting a Web site usable by blind or low-vision users (only text readable PDF's).

FEDERAL TAX INCENTIVES

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit):** Small businesses with either **\$1,000,000 or less in revenue or 30 or fewer full-time employees** may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format (such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.

FEDERAL TAX INCENTIVES

- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190: Barrier Removal):** This annual deduction of up to **\$15,000** is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

Vocational Rehabilitation

Leveraging VR to Obtain
AT for Job Training and
Employment

Rehabilitation technology

"Rehabilitation Technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation.

The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

Individual Plan of Employment (IPE)

- Mandatory component of an IPE is to provide when appropriate the provision of Assistive Technology devices and services.

VR's Responsibility

- As with any other VR service, the standard for obtaining AT is whether it is "necessary to assist an individual with a disability in preparing, securing, retaining, or regaining an employment outcome." 29 U.S.C. § 723(a).

Post Employment Services:

- Post-employment services are defined as services provided after the person has achieved an employment outcome, which are necessary for the individual "to maintain, regain or advance in employment." 34 C.F.R. § 361.5(b)(37)(emphasis added)

Comparable Benefit Exception

- A person does not have to exhaust similar benefits in the following circumstances:
 - 1. If consideration of the similar benefit would interrupt or delay:
 - a. The progress of an individual toward achieving the employment outcome;
 - b. An immediate job placement; or
 - c. Services to an individual at extreme medical risk; or
 - 2. If diagnostic services, VR counseling, referral to other services, job placement or rehabilitation technology (i.e., AT) is involved.
- 29 U.S.C. § 721(a)(8)(A)(i); 34 C.F.R. § 361.54(b) and (c)(Emphasis Added).

Comparable Benefits Exception

- If another agency refuses to fulfill its obligations, the VR agency must provide the services, but may seek reimbursement from that agency. 29 U.S.C. § 721(a)(8)(C)(ii).
- If another agency refuses to provide a service that is within its area of responsibility, the individual does not have to wait until that dispute is resolved before obtaining the service. (Do not have to appeal the decision to get the service)

FEDERAL TAX INCENTIVES

- **Work Opportunity Tax Credit (Internal Revenue Code Section 51):** Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to **\$2,400** for each qualifying employee who works at least **400 hours** during the tax year. Additionally, a maximum credit of **\$1,200** may be available for each qualifying summer youth employee.

Title I of the Americans with Disabilities Amendment Act of 2009

Reasonable Accommodations in Employment

Who Is A Qualified Individual With A Disability

1. QID: To be protected by the ADA, a person must be able to prove s/he is a qualified individual with a disability.
 2. Disability: The term "disability" has a special meaning under the ADA.
- Disability under the ADA means a physical or mental impairment that substantially limits one or more major life activities

ADA Amendment Act- Scope of Definition & Substantially Limits

- No changes to definition but changes on how to interpret definition.
- Now there is less demanding standard to cover broad range of individuals

Substantial limitation

- Means that an individual is unable to perform, or is significantly limited in the ability to perform, an activity compared to an average person in the general population
- Look to three factors:
- the nature and severity of the impairment;
 - how long the impairment will last or is expected to last; and
 - the permanent or long term impact or expected impact of the impairment

ADA Amendment Act – Substantial Limitation

- ADAAA rejects the Supreme Court's decision in *Toyota v. Williams* interpretation of substantially limits
- Rejects that an impairment "substantially limits" a major life activity" if it "prevents or severely restricts the individual" from performing the activity

Other major life activities

- Walking
- Running
- Seeing
- Hearing
- Thinking
- Speaking
- Breathing
- Eating
- Lifting, Bending, Stooping

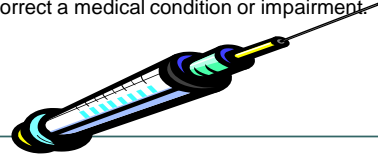


Major Bodily Functions

- Functions of the immune system
- Digestive
- Bowel
- Circulatory
- Neurological
- Brain

OLD Mitigating Measures Rule:

- ▶ Effect of Medication and Corrective Devices on Disability Determination
- ▶ Sometimes, medication, corrective devices, such as eye glasses and hearing aids, may actually fully correct a medical condition or impairment.



NEW Mitigating Measure Rule

- ▶ The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigation measures such as –
- ▶ Medication , medical supplies... prosthetics...hearing aids...assistive technology...
- ▶ Exception is ordinary eye glasses and contact lenses that fully correct visual acuity...

Four ways a Person Without a Disability is Protected by the ADA:

- ▶ A qualified individual who has a record of a disability or substantially limiting impairment.
(An impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active)
- ▶ A qualified individual who is regarded as having such an impairment. *(Applies if subjected to an action prohibited by Act)*
- ▶ An individual who has a known relationship or association with an individual with a disability.
- ▶ An individual who has opposed a discriminatory practice. Retaliation.

ADA Amendment Act – Regarded As Having a Disability

- The ADAA provides that an individual can establish coverage under the “regarded as” prong by showing that he or she was subjected to an action prohibited by the ADA.

Who is a Covered Employer

- ▶ Employer must have at least 15 or more employees
- ▶ Includes a location or facility of a business with less than 15 employees whose total number of employees for the company in all locations and facilities combined equals 15 or more.
- ▶ Other laws may apply to persons with disabilities who are employed by smaller businesses.

The ADA also applies to state and local governments.

- ▶ Includes all state and local governmental agencies, departments and entities regardless of their size or number of employees.
- ▶ Examples of state and local employers include: public schools, public universities, police and fire departments, public libraries, museums, public parks and recreation facilities, and social welfare offices.

Federal Government Not Covered by the ADA

- Federal employers are covered by the Rehabilitation Act of 1973. However, the protections available under the ADA are also available under the Rehabilitation Act. The main difference between these two laws are the administrative procedures that an employee or applicant must exhaust to later be able to file a lawsuit.

Being Qualified Under the ADA Skills, Experience and Education

- A person with a disability must meet the minimum job qualifications for the job. Job qualifications include but are not limited to the skill, experience, education, medical, safety, physical and other requirements a covered employer sets as requirements for a job.

Qualifications:

- Must not screen or tend to screen out people with disabilities be job-related
- Must be job-related
- Must be a business necessity
- Performance can not be accomplished by a reasonable accommodation
- Essential v Marginal Job Functions

Essential job functions

Factors to consider:

- Essential v. marginal
- Essential functions are important and necessary job duties
- Must be able to perform these duties
- Qualified whether need an accommodation or not
- ▶ written job descriptions before the position was advertised for;
- ▶ employer's opinion;
- ▶ duties other people in the same position perform;
- ▶ duties other people performed who held the same position
- ▶ duties of past employees in similar positions
- ▶ terms of a collective bargaining agreement

ADA Statutory Provision

- Discrimination includes an employer's failure to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee or applicant, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. 42 U.S.C. § 12112(b)(5)(A).

Reasonable Accommodations

- Includes making facilities accessible and usable by individuals with disabilities;
- Job restructuring;
- Part-time or modified work schedules;
- Acquisition or modification of equipment or devices;
- Appropriate adjustment or modification of examinations, training materials or policies;
- The provisions of qualified interpreters and readers; and
- Reassignment to a vacant position; and
- Any other similar accommodations for people with disabilities.

When can disability related questions be asked?

- Yes – After job offer extended but before you actually begin work OR
- Yes – After first day of work BUT ONLY IF job related and consistent with business necessity
- NO- If not for reasons above OR anytime before job offer extended

Keeping Medical Information Confidential



- The ADA requires employers to keep protected medical records confidential with a few limited exceptions for disclosure.

When disclosure of a disability may be appropriate ?

- Supervisors who need to know because the medical information relates to job assignments or accommodations.
- Safety personnel if the disability or medical condition may require emergency treatment.

Enforcement

File a complaint of discrimination with the Arizona Attorney General's Office, Civil Rights Division under the state's Arizonans With Disabilities Act (AzDA), by calling:

(602) 542-5263 or TDD: (602) 542-5002
in Phoenix, **-or-**
(520) 628-6500 or TDD: (520) 628-6872
in Tucson.

* *Complaints must be filed within 180 days from the date of the discrimination.*

Enforcement

File a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC)

An individual may start the process by going to the EEOC office or calling the office. Its address and telephone number are:

(602) 640-5000 (Voice)
(602) 640-5072 (TTY)
(800) 669-4000 (voice for people living outside Phoenix)
(800) 877-8339 (TTY for people living outside Phoenix)

* *Complaints must be filed within 300 days from the date of the discrimination.*

Arizona Loans for Assistive Technology

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AzLAT

The Arizona Loan Assistive Technology Program (AzLAT) is designed to assist Arizonans with Disabilities to secure the assistive technology they need to become more independent and productive members of the community with an improved quality of life

Self-Employment for Entrepreneurs with Disabilities (S.E.E.D.)

Self-Employment for Entrepreneurs with Disabilities (S.E.E.D.) is an alternative financing program designed to assist individuals with disabilities in obtaining funds at affordable interest rates for the purchase of office equipment, furniture, supplies, or assistive technology as they seek employment through self-employment or telework

Arizona Loans for Assistive Technology

- Funding comes from federal government and private sources
- Designed for the borrower to purchase assistive technology for themselves or for a person who has a disability
- Flexible Repayment Terms
- Loan amounts from \$500-\$10,000
- Current interest rate is **1% below prime**

AzLAT Services

- Information and Referral
- Consumer Support Services

S.E.E.D. Loans

- a consumer controlled program created to increase access to and funding of technology and other equipment, including adaptive equipment so that Arizonans with disabilities **can pursue self-employment** or telework from home and other remote sites.

S.E.E.D. Loans

- S.E.E.D. Loans would apply to individuals with disabilities who are unemployed, underemployed, self-employed or needing to maintain employment on a full time or part time basis.

Type of Equipment AzLAT-T Funds

- S.E.E.D. will facilitate loans to purchase for one time purchases of a broad range of technology and other equipment, including adaptive equipment in order for the individual with a disability to have a **self-employment or** telework outcome. Allowable equipment shall include (but not be limited to):
 - Computers and related equipment

Type of Equipment S.E.E.D. Funds

- Computer access hardware or devices
- Computer software
- Worksite modifications

Type of Equipment S.E.E.D. Funds

- Home office modifications
- Modifications to home, outside of office space
- **Vehicle Modifications**
- Seating and positioning
- Mobility equipment

Types of Equipment AzLAT-T Funds

- Augmentative or alternative communication devices
- Environmental control devices or equipment
- Office equipment and supplies

Types of Equipment AzLAT-T Funds

- Personal digital assistance or other portable electronic equipment
- Videoconferencing equipment
- Hearing aids
- Vision aids
- Other equipment that will directly produce income as a result a **self-employment or** telework outcome.

AT Exchange Program

- Main Goal: **Online site for the donation, sale, exchange or acquisition of used or pre-owned AT items**
 - **Online forum or "ads site"** for individuals to donate, buy, sell or exchange used or new Assistive Technology (AT)
 - Operates like an **EBay or Craig's List Site**
 - **No fees or charges** to review, post ads or inquire about ads
 - Can post an ad for "**item needed**" Can Set To **email you with new items posted in your category of interest or by Keyword**
 - **Not for vendors** or "for profit companies" (at this point)
 - **Assistance with placing or reviewing ads** via phone by AzTAP staff if needed

AT Exchange Program

- Consumers can **post their own ads** with a computer & internet access
- User's **need to register** – create a username & password use/place or respond to ads
- **Site protects user's personal contact information** (phone & email)

AzLAT, SEED Loans or Exchange Program information

- Call or email Pamela Alcala, Clayton Guffy
- 602-776-4670(voice)
- 602-728-9536
- 800-477-9921
- Download the application from AZLAT Website
- www.azlat.net
- www.azATEXchange.org.

How to Access ACDL Service?

- Toll Free: 1-800-927-2260(Voice/TTY)
 - In Phoenix Area: 602-274-6287(Voice/TTY)
- Monday, Tuesday, Thursday or Friday
 - 9 A.M. to 1 P.M.